

Introduced by Senator Torres

February 14, 2014

An act to amend Section 65583 of the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

SB 1033, as introduced, Torres. Land use: local planning: housing elements.

The Planning and Zoning Law requires a city or county to prepare and adopt a comprehensive, long-term general plan, and requires the general plan to include specified, mandatory elements, including a housing element. That law requires the housing element, in turn, to contain, among other items, an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.

This bill would revise references to redevelopment agencies within those housing element provisions to instead refer to successor housing agencies.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 65583 of the Government Code is
- 2 amended to read:
- 3 65583. The housing element shall consist of an identification
- 4 and analysis of existing and projected housing needs and a
- 5 statement of goals, policies, quantified objectives, financial

resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs.

The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels, including extremely low income households, as defined in subdivision (b) of Section 50105 and Section 50106 of the Health and Safety Code. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584. Local agencies shall calculate the subset of very low income households allotted under Section 65584 that qualify as extremely low income households. The local agency may either use available census data to calculate the percentage of very low income households that qualify as extremely low income households or presume that 50 percent of the very low income households qualify as extremely low income households. The number of extremely low income households and very low income households shall equal the jurisdiction's allocation of very low income households pursuant to Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) (A) The identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. The identified zone or zones shall include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7), except that each local

1 government shall identify a zone or zones that can accommodate
2 at least one year-round emergency shelter. If the local government
3 cannot identify a zone or zones with sufficient capacity, the local
4 government shall include a program to amend its zoning ordinance
5 to meet the requirements of this paragraph within one year of the
6 adoption of the housing element. The local government may
7 identify additional zones where emergency shelters are permitted
8 with a conditional use permit. The local government shall also
9 demonstrate that existing or proposed permit processing,
10 development, and management standards are objective and
11 encourage and facilitate the development of, or conversion to,
12 emergency shelters. Emergency shelters may only be subject to
13 those development and management standards that apply to
14 residential or commercial development within the same zone except
15 that a local government may apply written, objective standards
16 that include all of the following:

17 (i) The maximum number of beds or persons permitted to be
18 served nightly by the facility.

19 (ii) Off-street parking based upon demonstrated need, provided
20 that the standards do not require more parking for emergency
21 shelters than for other residential or commercial uses within the
22 same zone.

23 (iii) The size and location of exterior and interior onsite waiting
24 and client intake areas.

25 (iv) The provision of onsite management.

26 (v) The proximity to other emergency shelters, provided that
27 emergency shelters are not required to be more than 300 feet apart.

28 (vi) The length of stay.

29 (vii) Lighting.

30 (viii) Security during hours that the emergency shelter is in
31 operation.

32 (B) The permit processing, development, and management
33 standards applied under this paragraph shall not be deemed to be
34 discretionary acts within the meaning of the California
35 Environmental Quality Act (Division 13 (commencing with Section
36 21000) of the Public Resources Code).

37 (C) A local government that can demonstrate to the satisfaction
38 of the department the existence of one or more emergency shelters
39 either within its jurisdiction or pursuant to a multijurisdictional
40 agreement that can accommodate that jurisdiction's need for

1 emergency shelter identified in paragraph (7) may comply with
2 the zoning requirements of subparagraph (A) by identifying a zone
3 or zones where new emergency shelters are allowed with a
4 conditional use permit.

5 (D) A local government with an existing ordinance or ordinances
6 that comply with this paragraph shall not be required to take
7 additional action to identify zones for emergency shelters. The
8 housing element must only describe how existing ordinances,
9 policies, and standards are consistent with the requirements of this
10 paragraph.

11 (5) An analysis of potential and actual governmental constraints
12 upon the maintenance, improvement, or development of housing
13 for all income levels, including the types of housing identified in
14 paragraph (1) of subdivision (c), and for persons with disabilities
15 as identified in the analysis pursuant to paragraph (7), including
16 land use controls, building codes and their enforcement, site
17 improvements, fees and other exactions required of developers,
18 and local processing and permit procedures. The analysis shall
19 also demonstrate local efforts to remove governmental constraints
20 that hinder the locality from meeting its share of the regional
21 housing need in accordance with Section 65584 and from meeting
22 the need for housing for persons with disabilities, supportive
23 housing, transitional housing, and emergency shelters identified
24 pursuant to paragraph (7). Transitional housing and supportive
25 housing shall be considered a residential use of property, and shall
26 be subject only to those restrictions that apply to other residential
27 dwellings of the same type in the same zone.

28 (6) An analysis of potential and actual nongovernmental
29 constraints upon the maintenance, improvement, or development
30 of housing for all income levels, including the availability of
31 financing, the price of land, and the cost of construction.

32 (7) An analysis of any special housing needs, such as those of
33 the elderly; persons with disabilities, including a developmental
34 disability, as defined in Section 4512 of the Welfare and
35 Institutions Code; large families; farmworkers; families with female
36 heads of households; and families and persons in need of
37 emergency shelter. The need for emergency shelter shall be
38 assessed based on annual and seasonal need. The need for
39 emergency shelter may be reduced by the number of supportive
40 housing units that are identified in an adopted 10-year plan to end

1 chronic homelessness and that are either vacant or for which
2 funding has been identified to allow construction during the
3 planning period.

4 (8) An analysis of opportunities for energy conservation with
5 respect to residential development. Cities and counties are
6 encouraged to include weatherization and energy efficiency
7 improvements as part of publicly subsidized housing rehabilitation
8 projects. This may include energy efficiency measures that
9 encompass the building envelope, its heating and cooling systems,
10 and its electrical system.

11 (9) An analysis of existing assisted housing developments that
12 are eligible to change from low-income housing uses during the
13 next 10 years due to termination of subsidy contracts, mortgage
14 prepayment, or expiration of restrictions on use. “Assisted housing
15 developments,” for the purpose of this section, shall mean
16 multifamily rental housing that receives governmental assistance
17 under federal programs listed in subdivision (a) of Section
18 65863.10, state and local multifamily revenue bond programs,
19 local redevelopment *or housing successor agency* programs, the
20 federal Community Development Block Grant Program, or local
21 in-lieu fees. “Assisted housing developments” shall also include
22 multifamily rental units that were developed pursuant to a local
23 inclusionary housing program or used to qualify for a density bonus
24 pursuant to Section 65916. *The analysis shall do the following:*

25 (A) ~~The analysis shall include~~ *Include* a listing of each
26 development by project name and address, the type of
27 governmental assistance received, the earliest possible date of
28 change from low-income use, and the total number of elderly and
29 nonelderly units that could be lost from the locality’s low-income
30 housing stock in each year during the 10-year period. For purposes
31 of state and federally funded projects, the analysis required by this
32 subparagraph need only contain information available on a
33 statewide basis.

34 (B) ~~The analysis shall estimate~~ *Estimate* the total cost of
35 producing new rental housing that is comparable in size and rent
36 levels, to replace the units that could change from low-income use,
37 and an estimated cost of preserving the assisted housing
38 developments. This cost analysis for replacement housing may be
39 done aggregately for each five-year period and does not have to
40 contain a project-by-project cost estimate.

1 (C) ~~The analysis shall identify~~ *Identify* public and private
2 nonprofit corporations known to the local government which have
3 legal and managerial capacity to acquire and manage these housing
4 developments.

5 (D) ~~The analysis shall identify~~ *Identify* and consider the use of
6 all federal, state, and local financing and subsidy programs which
7 can be used to preserve, for lower income households, the assisted
8 housing developments, identified in this paragraph, including, but
9 not limited to, federal Community Development Block Grant
10 Program funds, ~~tax increment funds received by a redevelopment~~
11 ~~agency of the community~~ *funding available to a housing successor*
12 *agency*, and administrative fees received by a housing authority
13 operating within the community. In considering the use of these
14 financing and subsidy programs, the analysis shall identify the
15 amounts of funds under each available program which have not
16 been legally obligated for other purposes and which could be
17 available for use in preserving assisted housing developments.

18 (b) (1) A statement of the community's goals, quantified
19 objectives, and policies relative to the maintenance, preservation,
20 improvement, and development of housing.

21 (2) It is recognized that the total housing needs identified
22 pursuant to subdivision (a) may exceed available resources and
23 the community's ability to satisfy this need within the content of
24 the general plan requirements outlined in Article 5 (commencing
25 with Section 65300). Under these circumstances, the quantified
26 objectives need not be identical to the total housing needs. The
27 quantified objectives shall establish the maximum number of
28 housing units by income category, including extremely low income,
29 that can be constructed, rehabilitated, and conserved over a
30 five-year time period.

31 (c) A program ~~which~~ *that* sets forth a schedule of actions during
32 the planning period, each with a timeline for implementation,
33 which may recognize that certain programs are ongoing, such that
34 there will be beneficial impacts of the programs within the planning
35 period, that the local government is undertaking or intends to
36 undertake to implement the policies and achieve the goals and
37 objectives of the housing element through the administration of
38 land use and development controls, the provision of regulatory
39 concessions and incentives, the utilization of appropriate federal
40 and state financing and subsidy programs when available, and the

1 utilization of moneys in a low- and moderate-income housing fund
2 of an agency if the locality has established a redevelopment project
3 area pursuant to the Community Redevelopment Law (Division
4 24 (commencing with Section 33000) of the Health and Safety
5 Code) a housing successor agency. In order to make adequate
6 provision for the housing needs of all economic segments of the
7 community, the program shall do all of the following:

8 (1) Identify actions that will be taken to make sites available
9 during the planning period with appropriate zoning and
10 development standards and with services and facilities to
11 accommodate that portion of the city's or county's share of the
12 regional housing need for each income level that could not be
13 accommodated on sites identified in the inventory completed
14 pursuant to paragraph (3) of subdivision (a) without rezoning, and
15 to comply with the requirements of Section 65584.09. Sites shall
16 be identified as needed to facilitate and encourage the development
17 of a variety of types of housing for all income levels, including
18 multifamily rental housing, factory-built housing, mobilehomes,
19 housing for agricultural employees, supportive housing,
20 single-room occupancy units, emergency shelters, and transitional
21 housing.

22 (A) Where the inventory of sites, pursuant to paragraph (3) of
23 subdivision (a), does not identify adequate sites to accommodate
24 the need for groups of all household income levels pursuant to
25 Section 65584, rezoning of those sites, including adoption of
26 minimum density and development standards, for jurisdictions
27 with an eight-year housing element planning period pursuant to
28 Section 65588, shall be completed no later than three years after
29 either the date the housing element is adopted pursuant to
30 subdivision (f) of Section 65585 or the date that is 90 days after
31 receipt of comments from the department pursuant to subdivision
32 (b) of Section 65585, whichever is earlier, unless the deadline is
33 extended pursuant to subdivision (f). Notwithstanding the
34 foregoing, for a local government that fails to adopt a housing
35 element within 120 days of the statutory deadline in Section 65588
36 for adoption of the housing element, rezoning of those sites,
37 including adoption of minimum density and development standards,
38 shall be completed no later than three years and 120 days from the
39 statutory deadline in Section 65588 for adoption of the housing
40 element.

(B) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall identify sites that can be developed for housing within the planning period pursuant to subdivision (h) of Section 65583.2. The identification of sites shall include all components specified in subdivision (b) of Section 65583.2.

(C) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(2) Assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (9) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (9) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not

1 available. The program may include strategies that involve local
2 regulation and technical assistance.

3 (7) Include an identification of the agencies and officials
4 responsible for the implementation of the various actions and the
5 means by which consistency will be achieved with other general
6 plan elements and community goals.

7 (8) Include a diligent effort by the local government to achieve
8 public participation of all economic segments of the community
9 in the development of the housing element, and the program shall
10 describe this effort.

11 (d) (1) A local government may satisfy all or part of its
12 requirement to identify a zone or zones suitable for the
13 development of emergency shelters pursuant to paragraph (4) of
14 subdivision (a) by adopting and implementing a multijurisdictional
15 agreement, with a maximum of two other adjacent communities,
16 that requires the participating jurisdictions to develop at least one
17 year-round emergency shelter within two years of the beginning
18 of the planning period.

19 (2) The agreement shall allocate a portion of the new shelter
20 capacity to each jurisdiction as credit towards its emergency shelter
21 need, and each jurisdiction shall describe how the capacity was
22 allocated as part of its housing element.

23 (3) Each member jurisdiction of a multijurisdictional agreement
24 shall describe in its housing element all of the following:

25 (A) How the joint facility will meet the jurisdiction's emergency
26 shelter need.

27 (B) The jurisdiction's contribution to the facility for both the
28 development and ongoing operation and management of the
29 facility.

30 (C) The amount and source of the funding that the jurisdiction
31 contributes to the facility.

32 (4) The aggregate capacity claimed by the participating
33 jurisdictions in their housing elements shall not exceed the actual
34 capacity of the shelter.

35 (e) Except as otherwise provided in this article, amendments to
36 this article that alter the required content of a housing element
37 shall apply to both of the following:

38 (1) A housing element or housing element amendment prepared
39 pursuant to subdivision (e) of Section 65588 or Section 65584.02,
40 when a city, county, or city and county submits a draft to the

1 department for review pursuant to Section 65585 more than 90
2 days after the effective date of the amendment to this section.

3 (2) Any housing element or housing element amendment
4 prepared pursuant to subdivision (e) of Section 65588 or Section
5 65584.02, when the city, county, or city and county fails to submit
6 the first draft to the department before the due date specified in
7 Section 65588 or 65584.02.

8 (f) The deadline for completing required rezoning pursuant to
9 subparagraph (A) of paragraph (1) of subdivision (c) shall be
10 extended by one year if the local government has completed the
11 rezoning at densities sufficient to accommodate at least 75 percent
12 of the units for low- and very low income households and if the
13 legislative body at the conclusion of a public hearing determines,
14 based upon substantial evidence, that any of the following
15 circumstances exist:

16 (1) The local government has been unable to complete the
17 rezoning because of the action or inaction beyond the control of
18 the local government of any other state, federal, or local agency.

19 (2) The local government is unable to complete the rezoning
20 because of infrastructure deficiencies due to fiscal or regulatory
21 constraints.

22 (3) The local government must undertake a major revision to
23 its general plan in order to accommodate the housing-related
24 policies of a sustainable communities strategy or an alternative
25 planning strategy adopted pursuant to Section 65080.

26 The resolution and the findings shall be transmitted to the
27 department together with a detailed budget and schedule for
28 preparation and adoption of the required rezonings, including plans
29 for citizen participation and expected interim action. The schedule
30 shall provide for adoption of the required rezoning within one year
31 of the adoption of the resolution.

32 (g) (1) If a local government fails to complete the rezoning by
33 the deadline provided in subparagraph (A) of paragraph (1) of
34 subdivision (c), as it may be extended pursuant to subdivision (f),
35 except as provided in paragraph (2), a local government ~~may~~ *shall*
36 not disapprove a housing development project, nor require a
37 conditional use permit, planned unit development permit, or other
38 locally imposed discretionary permit, or impose a condition that
39 would render the project infeasible, if the housing development
40 project (A) is proposed to be located on a site required to be

1 rezoned pursuant to the program action required by that
2 subparagraph and (B) complies with applicable, objective general
3 plan and zoning standards and criteria, including design review
4 standards, described in the program action required by that
5 subparagraph. Any subdivision of sites shall be subject to the
6 Subdivision Map Act (Division 2 (commencing with Section
7 66410)). Design review shall not constitute a “project” for purposes
8 of Division 13 (commencing with Section 21000) of the Public
9 Resources Code.

10 (2) A local government may disapprove a housing development
11 described in paragraph (1) if it makes written findings supported
12 by substantial evidence on the record that both of the following
13 conditions exist:

14 (A) The housing development project would have a specific,
15 adverse impact upon the public health or safety unless the project
16 is disapproved or approved upon the condition that the project be
17 developed at a lower density. As used in this paragraph, a “specific,
18 adverse impact” means a significant, quantifiable, direct, and
19 unavoidable impact, based on objective, identified written public
20 health or safety standards, policies, or conditions as they existed
21 on the date the application was deemed complete.

22 (B) There is no feasible method to satisfactorily mitigate or
23 avoid the adverse impact identified pursuant to paragraph (1), other
24 than the disapproval of the housing development project or the
25 approval of the project upon the condition that it be developed at
26 a lower density.

27 (3) The applicant or any interested person may bring an action
28 to enforce this subdivision. If a court finds that the local agency
29 disapproved a project or conditioned its approval in violation of
30 this subdivision, the court shall issue an order or judgment
31 compelling compliance within 60 days. The court shall retain
32 jurisdiction to ensure that its order or judgment is carried out. If
33 the court determines that its order or judgment has not been carried
34 out within 60 days, the court may issue further orders to ensure
35 that the purposes and policies of this subdivision are fulfilled. In
36 any such action, the city, county, or city and county shall bear the
37 burden of proof.

38 (4) For purposes of this subdivision, “housing development
39 project” means a project to construct residential units for which
40 the project developer provides sufficient legal commitments to the

1 appropriate local agency to ensure the continued availability and
2 use of at least 49 percent of the housing units for very low, low-,
3 and moderate-income households with an affordable housing cost
4 or affordable rent, as defined in Section 50052.5 or 50053 of the
5 Health and Safety Code, respectively, for the period required by
6 the applicable financing.

7 (h) An action to enforce the program actions of the housing
8 element shall be brought pursuant to Section 1085 of the Code of
9 Civil Procedure.